

Remarks

I. General Remarks

Claims 1, 3-7, 9-12, 14-18, and 20-22 are pending in this application. Claims 12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,179,161 to Kovens et al. (hereinafter "Kovens"). Claims 12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,986,615 to Hieb et al. (hereinafter "Hieb"). Claims 1, 3-5, 9-12, 14-16, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,302,293 to Wittern, Jr. et al. (hereinafter "Wittern"). Claims 1, 3-7, 9-12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,529,207 to Oden, et al. (hereinafter "Oden"). Claims 1, 2-7, 9-12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hieb in view of Wittern. Claims 1, 3-7, 9-12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kovens.

Applicant respectfully traverses the rejections as set forth in more detail below. Applicant submits that each of the claims includes allowable subject matter and is in condition for allowance. Thus, Applicant respectfully submits that the rejections to the claims should be withdrawn, and the claims should be passed to issuance.

II. Remarks Regarding the 35 U.S.C. § 102(b) Rejections

A. Kovens Does Not Anticipate Applicant's Claims

Applicant respectfully submits that Kovens does not anticipate Applicant's claims 12, 14-18, and 20-22. Kovens, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is

anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Kovens fails to show a dispenser that uses a **retractable gauge step** adaptable to vend products of various sizes. The Examiner has cited very generally to the entirety of column 7 of Kovens without specifically pointing out which feature of Kovens may be understood to be a retractable gauge step. The cited portions of Kovens fail to teach or discuss a **retractable** gauge step, referring at best to a removable tray 108 featuring apertures 110 and welded to a reinforcing and stop plate 116. The stop plate is *welded* to the tray, and as such, the stop plate is not a **retractable** gauge step. Applicant respectfully requests that the Examiner clarify which element or elements of Kovens are interpreted as a retractable gauge step.

Applicants note that the requirement that the gauge step be retractable is not merely a limitation unused by any method limitation. The retractable gauge step is able to support products stored in the product dispensing assembly when it is extended (in a first position), and able to dispense products when it is retracted (in a second position). At least the requirement of being able to support products is cited in the "employing" step of the method of claim 12. The retractability of the gauge step is critical to its dual functionality.

Additionally, claims 14-15 and 17-18 clarify that the gauge step is adaptable to being held by detents in at least a first (extended) position in which it supports the product and a second (retracted) position in which it does not support the product. Claim 16 illustrates the requirement that the retractable gauge step be able to *slide* from the first position to the second position. Claims 20-22 expand this functionality to a plurality of positions for the gauge step. Since Kovens does not teach a retractable gauge step, Kovens also does not teach a retractable gauge step adaptable to sliding between (at least) two positions, extended and retracted.

Because Kovens does not teach a retractable gauge step, as required by independent claim 12 and dependent claims 14-18, and 20-22, Kovens does not anticipate the claims of the present invention. Thus, the rejection under 35 U.S.C. § 102(b) of claims 12, 14-18, and 20-22 should be withdrawn, and these claims should be placed in a condition for allowance.

B. Hieb Does Not Anticipate Applicant's Claims

Applicant respectfully submits that Hieb does not anticipate Applicant's claims 12, 14-18, and 20-22. Hieb, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Hieb fails to show a product dispensing assembly having a **retractable gauge step** adaptable to vend products of various sizes. While Hieb appears to disclose certain ribs or ramps to guide vending products down a vertical vending chute, nowhere does Hieb teach a **retractable gauge assembly**. Specifically, the cited portion of Hieb at best teaches that the ribs or ramps may contain hooks, but nowhere does Hieb teach a **retractable gauge step** having a plurality of hooks coupled to a dispensing assembly. Additionally, the hooks which Hieb mentions are used to attach a base plate or ribs to a wall or ramp, not to attach a retractable gauge step to a dispensing mechanism. (Hieb, col. 9:12) The Examiner states that hooks 231 and 203 in Hieb slide into cutout slots "as the gauging ribs are retracted to the appropriately selected size." (Office Action, p.12) However, the act of hooks engaging slots is not evidence of a retractable gauge assembly, and Hieb does not teach or disclose in any other form that the cited ribs are retractable. Additionally, since Hieb does not teach a retractable

gauge step, Hieb also does not teach a retractable gauge step adaptable to sliding between (at least) two positions, extended and retracted.

Because Hieb does not teach a retractable gauge step, as required by independent claim 12 and dependent claims 14-18, and 20-22, Hieb does not anticipate the claims of the present invention. Thus, the rejection under 35 U.S.C. § 102(b) of claims 12, 14-18, and 20-22 should be withdrawn, and these claims should be placed in a condition for allowance.

C. Wittern Does Not Anticipate Applicant's Claims

Applicant respectfully submits that Wittern does not anticipate Applicant's claims 1, 3-5, 9-12, 14-16, and 20-22. Wittern, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Wittern fails to show a product dispensing assembly having a **retractable gauge step** adaptable to vend products of various sizes. Specifically, Wittern teaches a door or retainer 28, hingedly coupled to a column, that may be closed and latched or released and open. (Wittern, Abstract) Specifically, the second position of this door or retainer, the open position, allows for restocking, maintenance, and other tasks for a vending machine operator. (Wittern, 2:55-65) This means that the second position does not allow for the vending of products, as required by the retractable gauge step of the present invention. Additionally, since Wittern does not teach a retractable gauge step, Wittern also does not teach a retractable gauge step adaptable to **sliding** between (at least) two positions, extended and retracted. The retainer of Wittern pivots and **does not slide** between an extended and retracted position.

Because Wittern does not teach a retractable gauge step adaptable to vend products of various sizes, Wittern does not anticipate the claims of the present invention. Thus, the rejection under 35 U.S.C. § 102(b) of claims 1, 3-5, 9-12, 14-16, and 20-22 should be withdrawn, and these claims should be placed in a condition for allowance.

D. Oden Does Not Anticipate Applicant's Claims

Applicant respectfully submits that Oden does not anticipate Applicant's claims 1, 3-7, 9-12, 14-18, and 20-22. Oden, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Oden fails to show a product dispensing assembly having a retractable gauge step adaptable to vend products of various sizes. The Examiner, in the Response to Argument section of the Office Action, states that Oden features a series of cutout slots into which hooks located on a retractable gauge step are inserted. (Office Action, p.11) However, the Examiner has cited very generally to column 3, line 52 - column 4, line 30 of Oden without specifically pointing out which feature of Oden may be understood to be a retractable gauge step. The cited portions of Oden fail to teach or discuss a retractable gauge step, referring at best to a retainer 20 having hook portions 40 and 42 that removably secure the retainer to selected slots of slot rows 12 and 18. However, these removable retainers (or ribs) are not taught as being retractable. Additionally, adjustable retainer 50, which is attached by lugs 56-62, is also not taught by Oden as being retractable. Finally, the cited portions of Oden discuss retainers which adjustably connect *compartment walls*. (Oden, col: 4, lines 15-30). This fails to teach a product dispensing assembly having a retractable gauge step. Applicant respectfully requests

that the Examiner clarify which element or elements of Oden are interpreted as a retractable gauge step. Since Oden does not teach a retractable gauge step, Oden also does not teach a retractable gauge step adaptable to sliding between (at least) two positions, extended and retracted.

Accordingly, Oden cannot anticipate Applicant's claims. Thus, the rejection under 35 U.S.C. § 102(b) of claims 1, 3-7, 9-12, 14-18, and 20-22 should be withdrawn, and these claims should be placed in a condition for allowance.

III. Remarks Regarding the 35 U.S.C. § 103(a) Rejections

Claims 1, 2-7, 9-12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hieb in view of Wittern. Additionally, claims 1, 3-7, 9-12, 14-18, and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kovens. Applicant respectfully traverses.

A prima facie case of obviousness requires a showing that all claim limitations be taught or suggested by the art. M.P.E.P. § 2143.03. Applicant respectfully submits that the cited references fail to establish a prima facie case of obviousness in that, even if combined, they still fail to teach each and every limitation of the Applicant's claims.

In particular, neither Hieb nor Wittern teaches or suggests a product dispensing assembly having a retractable gauge step adaptable to vending products of various sizes. Wittern does not teach this element, and Hieb fails to remedy this deficiency, as discussed above.

Additionally, for the reasons discussed above, Kovens also fails to teach or suggest a product dispensing assembly having a retractable gauge step adaptable to vending products of various sizes.

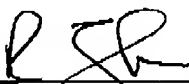
Because the combination of Hieb and Wittern and Kovens alone do not teach or suggest a product dispensing assembly having a **retractable** gauge step, the present invention is not obvious over the cited combination and reference. In particular, a dispenser assembly permanently affixed to a retractable gauge assembly prevents, for example, the use of removable parts. See e.g., Applicant's Specification at ¶¶ 13. This feature may allow for the elimination of delays and costs due to lost or misplaced removable parts. Thus, the combination of Hieb and Wittern and Kovens alone does not achieve the advantages of a retractable gauge step permanently affixed to the dispensing assembly.

In summary, a prima facie case of obviousness has not been established with reference to the rejected claims. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) of claims 1, 2-7, 9-12, 14-18, and 20-22 over Hieb and Wittern and claims 1, 3-7, 9-12, 14-18, and 20-22 over Kovens be withdrawn, and these claims should be allowed.

Conclusion

Applicant respectfully submits that the rejection of claims 1, 3-7, 9-12, 14-18, and 20-22 should be withdrawn, and these claims should be passed to issuance.

Respectfully submitted,



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